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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,210	12/12/2001	Thitiwan Buranachokpaisan	D48001	8878

7590 05/14/2003
CHURCH & DWIGHT CO., INC.
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EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 05/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/021,210

Applicant(s)

BURANACHOKPAISAN, THITIWAN

Examiner

Lauren Q Wells

Art Unit

1617

-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisionai application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

Claims 1-24 are pending.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-23, drawn to an antiperspirant composition, classified in class 424, subclass 65.
- II. Claim 24, drawn to a method of making an antiperspirant composition, classified in class 514, subclass 953.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be used to make other cosmetic stick formulations, such as lipsticks.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Election/Restrictions

Claims 1-24 are generic to a plurality of disclosed patentably distinct species comprising an antiperspirant cosmetic skin formulation. In particular, the formulation comprises a volatile material, a non-volatile liquid emollient, a non-liquid organic ester emollient, an organic wax, a polyethylene homo or copolymer, and an antiperspirant active agent. Possible volatile materials include cyclopentasiloxane and polydimethylsiloxane. Possible non-volatile liquid emollients

Art Unit: 1617

include octyl isononanoate, PEG-8 distearate, PPG-14 butyl ether, phenyl trimethicone, isostearyl isostearate, isostearyl palmitate, benzyl laurate, PEG 12, and linear C12-C15 alkyl benzoates. Possible non-liquid organic ester emollients include isostearyl behenate, octadecyl propanoate, arachidyl propionate, cetyl ricinoleate, glyceryl triundecanoate. Possible waxes include beeswax, montan, ozokerite, ceresin, paraffin, hydrogenated castor oil, silicone wax. Possible polyethylene homo or copolymers include creamer, unilin, unacid or unithox. Possible antiperspirant actives include aluminum zirconium tri-chlorohydrate glycine, aluminum zirconium tetra-chlorohydrate glycine, and aluminum zirconium penta-chlorohydrate glycine. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Applicant is respectfully request to elect a single species of a volatile material, a non-volatile liquid emollient, a non-liquid organic ester emollient, an organic wax, a polyethylene homo or copolymer, and an antiperspirant active agent, within the elected group above, for examination purposes only.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Irving Fishman on 4/23/03 to request an oral election to the above restriction requirement, but did not result in an election being made.

Art Unit: 1617


Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
May 9, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER

5/12/03